



# NEWSLETTER

A Nation Without Corruption, A Society with Integrity

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## PRESIDENT'S MESSAGE

As we close the year 2021 and move to 2022 its time to reflect on the challenges the country and our movement faced since the COVID-19 pandemic hit our nation in early 2020. Many lost their loved ones due to Covid-19, businesses collapsed, job layoffs and many suffered retrenchments.

Since early 2020 we had three different governments and three different Prime Ministers. This is an unusual situation in Malaysian politics and the political instability is a setback for the reform agenda. For TI-Malaysia we will need to pursue our agenda to push for institutional reforms as this is one of the key factors to improve our standing in the Corruption Perceptions Index. Among the areas we will continue to focus is on the amendment to the Whistleblowers Protection Act (2010), reforming MACC to be a commission under the constitution, separation of power between the Attorney General and the Public Prosecutor, Political Financing and Investigative Journalism.

Overall, 2021 was a successful year for our movement where we carried out several projects despite the constraints of lockdown caused by Covid-19. Research on the "Effectiveness and Transparency of Government Aid for Malaysian SMEs during Covid-19" was completed successfully and the findings was shared with the Ministry of Finance for future stimulus package rollouts. Other online forums held were on investigative journalism training, whistle blowing in the private sector, misconduct in public office,

political financing and video production on Corporate Liability. We also completed our research work on the "Deferred Prosecution Agreement in other Jurisdictions" and the findings was shared with MACC. We take this opportunity to thank all our funders for their support.



As we end the year 2021, we will be launching the "Corporate Liability Adequate Procedure Checklist" for the private sector and also an E-Book on "Section 17A & Adequate Procedures for Employers in SMEs". Both these documents will be very useful for the private sector to ensure their adequate procedures are actually adequate. As the enforcement on corporate liability has kicked in from June 2020, company directors, controllers and owners must realize that they are exposed if any form of gratification is offered or given to others to obtain a business advantage.

In October 2021 we had the elections for the new exco and I am pleased to report that the exco line up is made up of 50% new faces, new young talents and increase in women participation in the committee. We want to thank all members for your continued support to the exco to carry out various activities for the new term.

**Dr Muhammad Mohan**

**President**

**Transparency International-Malaysia**

## EDITORIAL

### THESE ARE STRANGE TIMES

We can't really call ourselves the guardians of the moral fabric of the nation. No doubt we are the keepers of the corruption index in Malaysia for both the corporate and public sector, we can't really change how the nation behaves on the ethical plane. We can only point out the perimeters of where the nation is going astray as far as corruption and ethics are concerned.

Such a sacrifice by a few volunteers who comprise the executive committee of TI-M should truly be appreciated. Throughout the difficult times of the pandemic in 2020 and 2021, these handful of committed ladies and gentlemen have toiled to train, dissipate and share their expertise, time and knowledge to cajole the various corporate conglomerates and government bodies to abide by the boundaries of good governance and ethics without expecting even an iota of rewards. When our services are accepted and followed, the sheer satisfaction of mission accomplished is reward enough. However, after all the hard work and toil, when things move backwards instead of forward, it can really be disappointing and frustrating.

After pushing the country to practice good governance, transparency and ethics, for a moment in 2019, our standing in the CPI improved quite satisfactorily and we were truly elated as were some sections of society. Sadly, today, it is a different story altogether. We are back into murky waters, groping our way in darkness. All the framework set to propel the nation into first world status has withered and we are back to where we started. Corrupted practices are condoned, transparency has taken a back seat and ethics is subject to interpretation. These are strange times indeed. Despite our best efforts, our corruption perception score is sliding down and those in authority are in deference to political patronage rather than moral obligations.

These are difficult times and the light at the end of the tunnel seems quite a distance away. Despite the circumstances, whether we succeed or fail, we will endeavor to carry the torch of righteousness and keep nagging those in power, whether in the corporate sector or the government to do what is right, not by words only but by action as well.

Very Best Regards,

**Sivasangaran Nair**



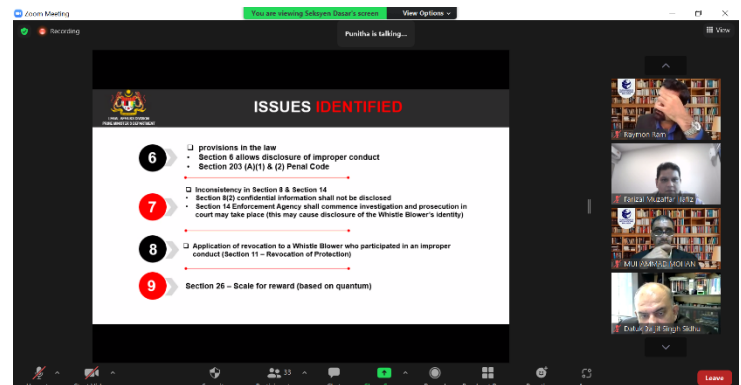
## ROUNDTABLE ON STRENGTHENING WHISTLEBLOWER PROTECTION UPHOLDING PUBLIC CONFIDENCE IN REPORTING CORRUPTION

On 2nd September 2021, TI-Malaysia organized a closed-door Roundtable on Strengthening Whistleblower Protection with the participation of the Prime Minister’s Department, the Attorney General’s Chambers, government enforcement agencies, and civil society organizations. Ms. Sheryl Goodman, UNODC Whistleblowing Consultant, and Ms. Samantha Feinstein and Mr. Thomas Devine from the US-based Government Accountability Project (GAP) shared best practices and developments in whistleblower protection frameworks, whereas Ms. Punitha Silvarajoo from the Prime Minister’s Department, Senior Superintendent Farizal Muzaffar Hafiz from MACC, and Mr. Chew Phye Keat representing TI-M, shared the Malaysian perspective of gaps and challenges to be addressed in the framework.

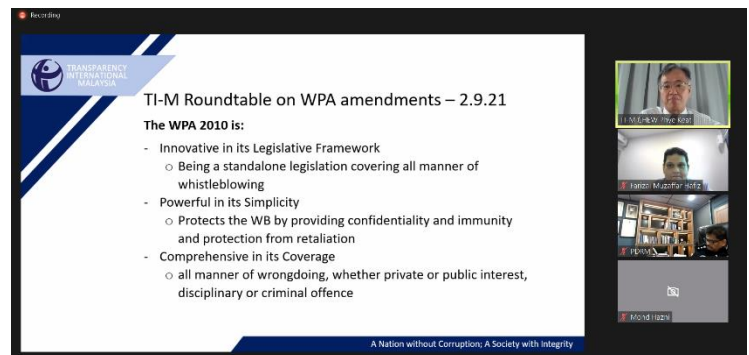
The organizing team was pleased to note that the government stakeholders were generally supportive of strengthening protections under the Whistleblower Protection Act 2010. TI-M advocated for much-needed amendments including: considering a centralized body for receiving whistleblower reports, allowing internal reporting to be covered by default under whistleblower protection, giving whistleblower protection law precedence over other laws, and giving discretion to protect whistleblowers even if the whistleblower is part of the wrongdoing. In particular, the anticipated amendment must also resolve conflicts with the Official Secrets Act 1972 which disqualifies civil servants from receiving whistleblower protection if they are found to have shared classified documents in reporting wrongdoing.



Presentation by Ms. Samantha Feinstein and Mr. Thomas Devine



Presentation by Ms Punitha Silvarajoo



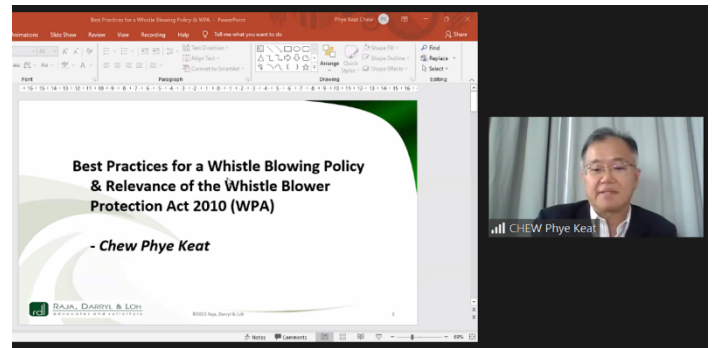
During the roundtable discussion

## PROTECT THE WHISTLEBLOWER, PROTECT THE COMPANY FIRST LINE OF DEFENCE FOR COMPANY

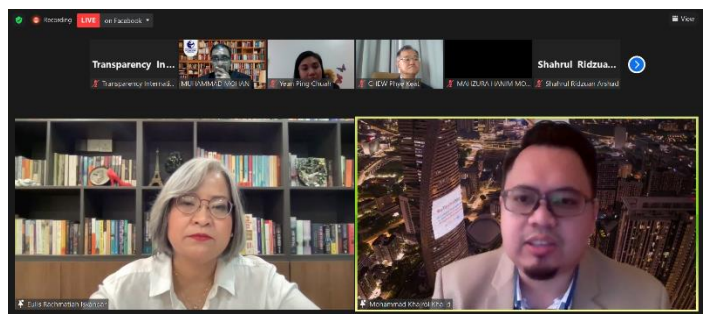
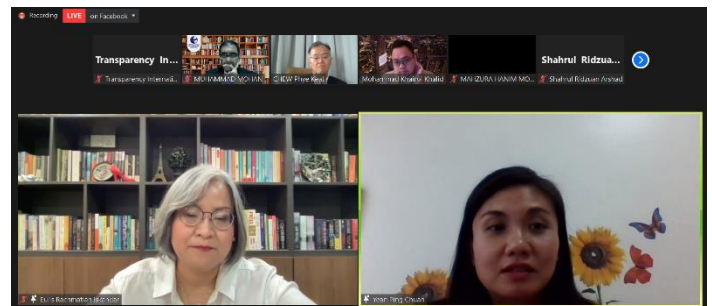
On 5th October 2021, TI-Malaysia held a public forum to encourage the corporate sector to view whistleblower policy as an important first line of defence in protecting the company from wrongdoing. Companies must encourage whistleblowers by providing secure channels for reporting issues and ensuring that the whistleblower is supported throughout the process and secure from retaliation.

Often, whistleblower policies may only look good on paper but fail to be implemented well. The forum therefore aimed to share real practices by expert practitioners in compliance who shared about how whistleblowing reports and investigations are handled in their organisation. The forum was entirely represented by TI-M's members, with Ms. Eulis Rachmatiah moderating the forum where panelists Ms. Chuah Yean Ping, Head of Group Compliance & Integrity in Sime Darby Bhd, and Mr. Mohammad Khairol Khalid, Head of Integrity & Governance at Telekom Malaysia Bhd, both shared from their experience on the process of receiving reports and investigations, and challenges to be overcome in protecting the whistleblower. Dr. Muhammad Mohan shared from his personal experience as a whistleblower, and Mr. Chew Phye Keat shared on the best practices in whistleblowing from a legal perspective, as well as current issues in need of amendment that would be beneficial to the corporate sector.

A total of 155 participants drawn largely from compliance and management professionals in the private sector attended the forum and the panellists had a frank and engaged discussion with participants on issues relating to whistleblower protection, such as protection from defamation, appropriate reporting channels, necessity for auditing the implementation, and the requirements for whistleblower protection under Section 17A of the MACC Act and the ISO 37001 Anti-bribery Management System.



Presentation by Mr Chew Phye Keat



Sharing session by Dr Muhammad Mohan, Ms Chuah Yean Ping and Mr Khairol Khalid

## **MONEY POLITICS: FINANCING FREE AND FAIR ELECTIONS**

### **POLITICAL FINANCING REFORM TO PREVENT GRAND SCALE CORRUPTION**

From 24th and 25th September, TI-Malaysia held a series of three seminars titled Money Politics: Financing Free and Fair Elections. The series was intended to draw attention to the critical importance of regulating political financing, as the current lack of a legislative framework allows for grand scale corruption that diverts public resources towards political war chests. The series was launched by TI-M Deputy President Mr. Lawrence Chew, and kicked off with a panel discussion where Mr. Andrew Khoo from the Bar Council Constitutional Committee, Ms. Cynthia Gabriel from C4, and Ms. Tricia Yeoh from IDEAS laid down the framework for political financing regulation.

The second session was youth-focused, with the panelists providing frank comments on how the younger generation are disenfranchised with the existing culture of patronage politics. As pointed out by Dr. Bridget Welsh, young voters have the potential to determine 1/3rd of the 220 seats in Parliament, provided that they exercise their right to vote. Mr Tharma Pillai from Undi18, another panelist, emphasised the need to invest in reaching out to and educating youth on these issues so that they can be a force for institutional change. Meanwhile, Bandar Kuching MP YB Dr. Kelvin Yii frankly shared the pressures that politicians face to raise funds to serve their constituents and provide expected welfare assistance which should come from government bodies, and the necessity to educate the public on the role of MPs as lawmakers.

The final session on 25th September, focusing on Reforms for Electoral Campaign Financing, was moderated by Mr. Alan Kirupakaran, a TI-Member and the former Executive Director. The panel included MPs YB Dato' Seri Utama Mukhriz Mahathir, YB Dr. Ong Kian Ming, and YB Puan Isnaraissah Munirah Majilis, as well as Dr. Terence Gomez and

Chairman of Bersih, Mr. Thomas Fann. The panelists engaged in a rich exchange of opinions on the state of corruption involving political financing. The MPs provided critical insights into the core issues contributing to corruption and money politics in the electoral process, and raised important questions for consideration in advocating for regulation. While all the MPs agreed that parties generally understand the need for reform, they also pointed out the severe obstacles that need to be overcome, particularly in terms of vote-buying culture, and the thorny question of fair mechanisms and enforcement in regulation.

Dr Gomez said, "While we talk about party financing, it's not just for federal and state elections. We also have to enforce in the law some kind of monitoring of how money is used in party elections. Let's get to the root of the problem. Money politics started within politics during party elections and it has just escalated. It is now widespread. If we really want to deal with this problem, we have to also look at this issue of how party elections are conducted."

BERSIH Chairman Thomas Fann also advocated for regulations to demand greater transparency and accountability in campaign expenditure can be legislated through amendments to the Election Offences Act 1954. "The substantial reform needed to ensure that political parties do not seek funding from external or illegal sources is to provide public funding of parties based on a formula of vote and seat share won at the last election," said Thomas. "We also recommend seat-based direct public funding to promote women's representation in Malaysian politics."

Given the current fragmented state of politics in Malaysia and the instability caused by party-hopping – which also involves a large number of political

finances in securing loyalties – this area of advocacy is a key battleground in anticorruption advocacy for the next few years. Political financing regulation and fair apportionment of public funding will level the

playing field in our democratic process. Transparency International Malaysia is committed to advocating for this crucial reform in the coming year.



First session photo  
Political Donations and Corruption: The Elephant We Fail to See?



Second session photo  
Political Financing and the Vote: What Do Young Voters Want?



Third session photo  
Reforms for Electoral Campaign Financing: Clean Up Time?

## DEFERRED PROSECUTION AGREEMENT (DPA) ENHANCING COMPLIANCE CULTURE

On 28 September, TI-Malaysia organised a forum titled Deferred Prosecution Agreement: Options and Impact on Malaysia to present research findings on how DPAs are applied in other jurisdictions in consideration to countries like United Kingdom, United States, France, Singapore, Canada & Australia. The forum was moderated by Mr. Chew Phye Keat, member of TI-M with participation of Nicholas Pereira as the primary researcher and MACC officials, Tuan Hafaz Nazar (Director of Policy, Planning & Research Division) and Puan Sasha Lyna (Legal Officer to the Chief Commissioner).

DPA is a mechanism by which corporate entities may resolve allegations of corporate wrongdoing without having to face a full criminal trial, and the attendant risk of a criminal conviction. It is not intended to replace traditional prosecution, but is used in certain limited circumstances, where the prosecution may wish to lessen the cost of investigating economic crime by securing cooperation from the subject of the investigation. Currently, Malaysia's Parliament has amended the MACC Act 2009 to include a corporate liability provision under Section 17A. However, no specific DPA mechanism yet exists.

A stakeholder engagement with Chief Commissioner of MACC, Dato Seri Azam Baki with several legal officers was held right after the public forum in getting their feedback on the research done. MACC presented a proposal for a DPA provision to JKKMAR in a meeting chaired by the former Prime Minister at the PMO which resulted in MACC obtaining approval to carry out comprehensive research regarding a DPA in close consultation with the AGC and report its findings. In April 2020, MACC commissioned a specific paper addressed to the AGC to consider the mechanics of a DPA. Passionate in advocating for the introduction of a comprehensive DPA mechanism in

Malaysia, TI-Malaysia pleased to hear that the AGC is positive and open about bringing in a DPA mechanism to complement 17A and other Malaysian regulatory legislation. The DPA system should be initiated as a pilot project starting with amendment to the MACC Act to oversee the effectiveness of the provision. Given that the Malaysian legal system is similar to the UK and Singapore (i.e., being the legacies from the Commonwealth common law system), Malaysia should follow law concept by UK and refer to the terms used in the Singapore framework if a DPA system is to be introduced in Malaysia.



During the panel session



Dr Mohan presented the DPA research report to Datuk Seri Azam Baki

# The Rise of the Kleptocrat

**By: Frank Vogl**

*Chairman of the Partnership for Transparency, co-founder of Transparency International, an adjunct professor at Georgetown University*

*(First published by Asia Sentinel)*

It is a fact today that almost all authoritarian regimes are run by kleptocrats who steal from their citizens while ruthlessly abusing their human rights. The crimes being perpetrated by the governments of Myanmar, Malaysia, Iran, Egypt, Nigeria, and many more nations, not only impoverish their own citizens. They ultimately impoverish all of us.

Authoritarian regimes steal public funds in part to consolidate their power at home by providing special benefits to their supporters. At the same time, kleptocratic leaders are almost all not only paranoid and narcissistic, but extraordinarily greedy. They have an insatiable appetite for ever more wealth and, because they fear it might be expropriated if they ever leave public office, they go to great lengths to move their loot into secure assets in the world's leading capital markets.

The Covid-19 pandemic has accelerated these trends, prompting autocratic regimes to further curb freedoms of the press and public assembly, while in the United States, for example, the anti-vaccine movement has emerged as a key pillar of the Republican Party politics in many parts of the country.

The combination of all of these developments has made the goal of containing authoritarianism the central theme of US President Joe Biden's global policies and is the basis for his call to all democratic governments to join his virtual "Summit for Democracy" on December 9 and 10.

While authoritarianism is the overarching Summit issue, the White House has announced two closely related sub-themes: corruption and human rights.

Nations that are likely to be represented at the Biden Summit (which serves as the world's most important financial centers, from the US and the UK, to Switzerland and Singapore) are assisting the kleptocracies in their greed and their corruption.

The Summit is expected to provide an opportunity to highlight this complicity and to build support to secure fundamental change. This will demand that the participating governments demonstrate the courage to challenge some of the most powerful corporations in their own countries – starting with the biggest banks, real estate brokers, and accounting firms.

These institutions, plus hedge funds, private equity firms, art dealers and yacht brokers and major law firms are the enablers: they are indispensable in assisting the kleptocrats to move their loot safely and secretly across the world into shares and bonds listed on the major stock exchanges, into the acquisition of vast mansions, apartment buildings and office towers in Vancouver, Toronto, Los Angeles, London and Panama, and into other investment assets.

There is a tsunami of dirty cash flowing into the world's leading capital markets, exceeding an annual US\$2 trillion. I estimate that at least US\$600 billion of this loot goes into the US each year – more than the annual sales of Walmart, the world's largest retailer that alone accounts for around 10 percent of all U.S. consumer spending.



The enablers use extensive and sophisticated networks of shell companies, registered from the British Virgin Islands to South Dakota to Luxembourg – jurisdictions that allow companies to be registered without having to identify who the true owners are – to ensure secrecy as they aid and abet their kleptocratic clients.

While most countries have laws and government regulations designed to counter transnational graft and money laundering, their enforcement is modest, and the punishments fail to discourage wrongdoing.

Over a number of years, for example, HSBC, with sprawling Asian operations, was caught laundering cash for Mexican drug cartels and other criminal networks. The dirty deals started when the bank's chairman was John Bond, who would retire as Sir John, being knighted for "services to banking" without a blemish to his reputation. HSBC was fined a then-record US\$1.9 billion by the U.S. Justice Department in 2012, which defended the punishment by stating that it was concerned that a more severe punishment might damage international banking stability. The astonished reaction at that time by the Chairman of the US Senate's Banking Committee, Senator Charles Grassley of Iowa at a public hearing was: "are the banks too big to jail?"

Despite many fines paid by many leading banks and other enablers for money laundering, not a single chairman of a major institution has been criminally prosecuted, let alone even fired from his post.

The largest single case of corporate bribery of foreign government officials and money laundering involved the Wall Street firm of Goldman Sachs as its managed around US\$6 billion of bond issues to raise cash for Malaysia's IMDB development fund. The money should have assisted economic growth and benefited millions of citizens. Instead, with the connivance of Goldman Sachs executives, most of the cash was stolen, allegedly by former Malaysian Prime Minister Razak Najib and his close associates.

After Goldman Sachs agreed to pay fines of more than US\$4 billion its chairman, David Solomon, stated in October 2020, that the board of directors was cutting the pay and pensions of a host of its former and current top officials, including Solomon, by a total of US\$100 million. One year later, after the bank secured record earnings, the board announced a special deal that will provide Solomon with a possible special bonus of US\$30 million over the next five years.

We have the means to cripple authoritarian leaders' vast money laundering schemes. There is a need for governments to end the system of anonymous shell holding companies and require that all enterprises register their true beneficial owners, while all institutions that are financial enablers enforce rules that should require them to determine the true source of the funds entrusted to their management.

Such minimum requirements, uniformly adopted by, for example, the US, Canada, the UK, European Union, Switzerland, Singapore, and the United Arab Emirates, need to be accompanied by commitments to fully fund law enforcement agencies that can ensure that there is meaningful compliance with the laws and regulations. And, in addition, laws need to be formulated that make top chairmen and chief executive officers criminally liable for money laundering by the institutions that they run. The days when these highly-paid executives revel in their impunity need to end.

The Biden Summit participants know that such new laws and regulations and their enforcement will be difficult to push through their own national parliaments. The most powerful enablers, led by the heads of the biggest banks, are deeply networked into the political establishments of their countries. To safeguard their activities, they have equipped themselves with teams of professional lobbyists. In the case of the US, they also rely on making large political campaign contributions to protect their operations.

Public opinion polls across the world show that trust in government is exceptionally low and that too many politicians are boosting their fortunes and those of their business associates at the public's expense. The time has

come for Western government leaders to address these concerns directly. They need to curb the power and the money laundering operations of the enablers. Failure risks seeing still further growth of the already vast parallel universe of dark money that strengthens the authoritarians and endangers our freedoms and security.

The world will be watching on those carefully selected two days that the White House has selected for its meeting: December 9 is the UN's annual "International Anti-Corruption Day" and December 10 is the UN's annual "Human Rights Day."

# Anti-Corruption and ESG

*By: Eulis Rachmatiah Iskandar*

*TI-M Member*

Environmental, Social, and Corporate Governance (ESG) refers to the three key factors in measuring the sustainability and ethical impact of an investment in a company or business. More and more investors including investment firms, banks and other financial institutions are concerned about ESG related risks and are adopting ESG principles in their investment criteria. They use the ESG principles to evaluate new investments and to avoid companies that may pose a greater financial risk due to their ESG practices.

## **ESG's three key factors are:**

- i.Environmental criteria which analyse how a company performs as a steward of our environment
- ii.Social criteria which study on how a company treats stakeholders including its employees, suppliers, customers and how the company impacts the communities in which it operates
- iii.Governance criteria which look at how a company governs itself

The following are examples of ESG issues that are scrutinised by investors:

1. Climate change strategy, Equal opportunity & Diversity, Board duties and responsibilities
2. Biodiversity, Freedom of Association and Shareholder democracy
3. Energy efficiency, Health & Safety, Board Independence
4. Carbon intensity, Labour Rights, Executive compensation
5. Waste and pollution, Customer and Product Responsibility, Bribery and corruption
6. Deforestation, Child labour, Donation and Political lobbying

ESG is important to companies as it helps to make them attractive to investors and lenders and thus help them to secure capital. In addition, ESG enhances their risk management, maintains their licence to operate and at the same time enhances brand value and reputation.

In a 2019 RBC Global Asset Management Responsible Investment Survey of nearly 800 institutional investors from around the world, institutional investors surveyed indicated that anti-corruption is a top ESG concern. Corruption can take many forms including bribery, money laundering, fraud and tax evasion. According to UN Secretary General Antonio Guterres in 2018, corruption costs the global economy US\$3.6 trillion each year.

Investors now want to understand corruption risks and anti-corruption practices of companies that they are considering investing in. With corporate liability for corruption becoming more common around the world, including Malaysia, companies face greater consequences now and can lose business locally and abroad.

In 2020, the World Economic Forum released a report containing voluntary ESG metrics and disclosures which includes anti-corruption metrics and disclosures under the Governance Pillar. The anti-corruption section includes reporting on anti-corruption policies, training and incidents of corruption, advisory function and whistleblowing management. Disclosure is also required on initiatives to combat corruption including embedding anti-corruption in the company culture.

Investors understand that companies that have strong anti-corruption policies and practices are better positioned to manage and mitigate corruption risks and are therefore more attractive as investment. With more countries adopting ESG principles, the Malaysian palm oil industry has been affected by allegations of non-conformance with ESG principles and this has resulted in reputational damage as well as loss of revenue.

Moving forward, as ESG gains momentum around the world, Malaysian companies that maintain ESG values and demonstrate a strong anti-corruption position and reputation will be viewed most favourably by investors and other stakeholders.

## Rencana AMLA Siri 2: Regim AMLA di Malaysia

**By: Muhamad Nazri Shaidon**

*CFI Certified Financial Investigator (TI-M Member)*

Rencana yang lepas telah mengupas secara umum mengenai apa itu pengubahan wang haram (AMLA) dan aktiviti-aktiviti yang berkaitan. Kali ini, kita akan melihat lebih lanjut berkaitan penguatkuasaan AMLA di Malaysia atau popular disebut sebagai Regim AMLA.

Di bawah Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil Daripada Aktiviti Haram 2001 (AMLA 2001), Bank Negara Malaysia berperanan sebagai Unit Perisikan Kewangan (Financial Intelligence Unit, FIU) dalam negara. Bank turut bertanggungjawab menerajui rejim pencegahan pengubahan wang haram dan pencegahan pembiayaan keganasan yang teguh dengan kerjasama Kementerian dan agensi yang berkaitan, demi melindungi negara daripada risiko dan ancaman pengubahan wang haram dan pembiayaan keganasan (money laundering and terrorism financing, ML/TF). Tanggungjawab ini termasuk menyokong, menyelia dan menguatkuasakan pematuhan terhadap peraturan AML/CFT oleh institusi pelapor yang terdiri daripada institusi kewangan, institusi kewangan bukan bank (non-bank financial institutions, NBFi), serta perniagaan dan profesion bukan kewangan yang ditetapkan (designated non-financial businesses and professions, DNFBP).

Peranan yang dijalankan oleh Bank Negara Malaysia memerlukan kerjasama yang erat dengan agensi penguatkuasaan undang-undang (law enforcement agencies, LEA) dalam negara untuk memastikan hasil risikan kewangan disalurkan dengan kadar segera dan berkesan. Bagi memupuk tindakan berjaga-jaga dan responsif dalam menangani aktiviti ML/TF yang sentiasa berubah, maklumat yang berkaitan dengan trend, teknik dan ancaman ML/TF terkini juga dikongsi dengan LEA dan institusi pelapor. Bank juga mempengerusikan dan berperanan sebagai sekretariat kepada Jawatankuasa Penyelaras Kebangsaan bagi Pencegahan Pengubahan Wang Haram (National Coordination Committee to Counter Money Laundering, NCC), yang diwakili oleh 16 Kementerian dan agensi Kerajaan. Platform antara agensi ini bertanggungjawab menyelaras, melaksana dan memantau inisiatif AML/CFT pada peringkat kebangsaan.

Akta AMLA ini telah diwartakan di Malaysia pada tahun 2001 dan dikuatkuasakan pada tahun 2002. Dibawah akta ini, Kementerian Kewangan telah memberikan mandate kepada Bank Negara Malaysia (BNM) sebagai pihak berkuasa berwibawa (competent authority). Kenapa mandate ini diberikan kepada BNM? Umumnya masyarakat merasakan peranan atau mandate ini diberikan kepada BNM kerana BNM merupakan bank pusat di Malaysia. Pandangan ini sememangnya tidak benar. Mandat ini diberikan kepada BNM kerana adanya Unit Perisikan Kewangan (Financial Intelligence Unit) di BNM. Apakah pula peranan Jabatan Perisikan Kewangan ini?

### Unit Perisikan Kewangan (Financial Intelligence Unit - FIU)

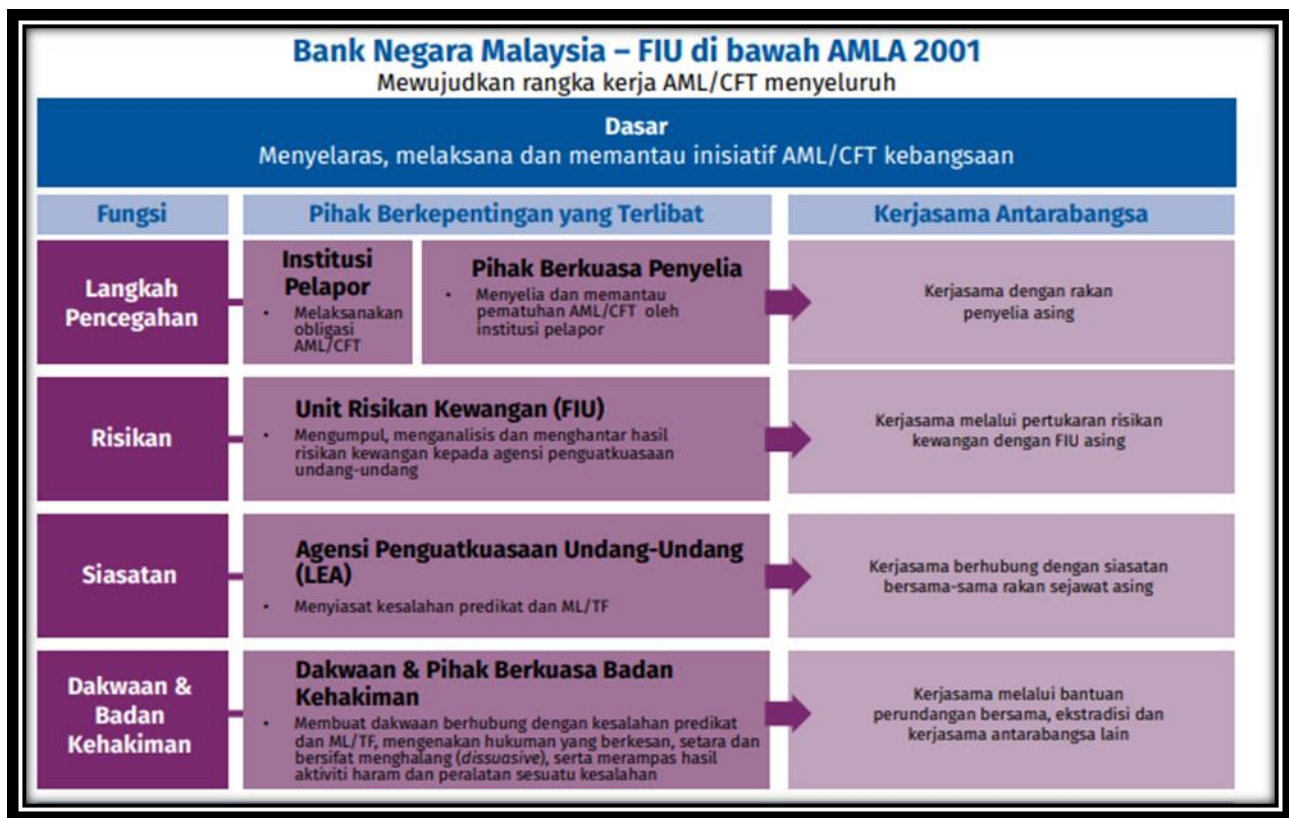
Jabatan Perisikan Kewangan ini berfungsi menerima segala maklumat risikan kewangan (*suspicious transaction report*) yang dilaporkan oleh Insititusi Pelapor di bawah AMLA. FIU akan menganalisa maklumat risikan kewangan tersebut dan berdasarkan analisa tersebut, FIU akan menyalurkan kepada agensi penguatkuasaan (*law enforcement agency*) yang terlibat seperti Polis Diraja Malaysia (PDRM), Suruhanjaya Pencegahan Rasuah Malaysia (SPRM), Jabatan Kastam Diraja Malaysia (JKDM), Jabatan Imigresen Malaysia (JIM), Jabatan Perhilitan dan Lembaga Minyak Sawit Malaysia (MPOB).

Bank Negara Malaysia (BNM) dalam peranannya sebagai Unit Perisikan Kewangan (FIU) di bawah Akta Pencegahan Pengubahan Wang Haram dan Pembiayaan Keganasan 2001 juga berkongsi semua maklumat yang diterima daripada FIU asing kepada agensi penguatkuasaan undang-undang tempatan.

Dalam satu kenyataan hari ini, BNM berkata sebagai ahli Kumpulan 1 Egmont, FIU, bank pusat itu terikat dengan Prinsip Kumpulan Egmont untuk Pertukaran Maklumat antara FIU asing untuk melindungi kerahsiaan maklumat mengikut piawaian dan protokol antarabangsa.

Berbeza dengan struktur FIU di negara lain yang mana kebanyakan FIU merupakan *stand-alone entity*. Struktur FIU di Brunei sama seperti di Malaysia yang mana FIU berada di Bank Negara Brunei. Beberapa contoh struktur FIU seperti berikut:

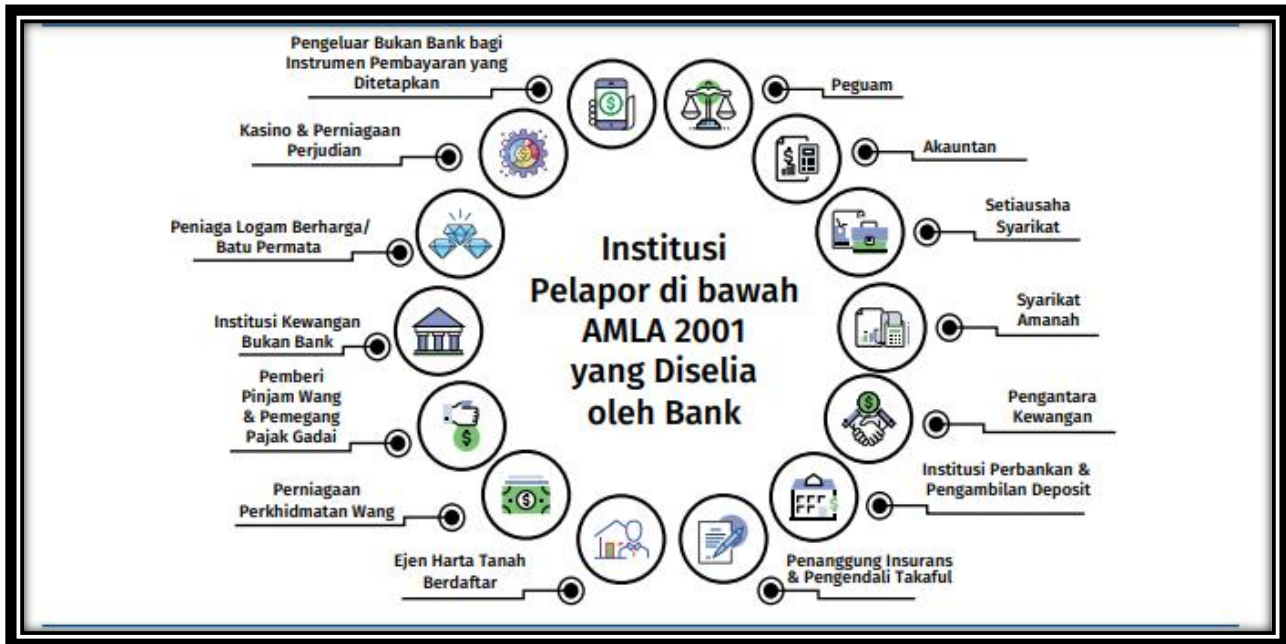
1. Indonesia - Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK)
2. Australia - Australian Transaction Reports and Analysis Centre (AUSTRAC)
3. Thailand - Anti Money Laundering Office (AMLO)
4. Singapura - Suspicious Transaction Reporting Office (STRO)
5. Philippines - Anti- Money Laundering Council
6. Brunei - Brunei Darussalam Central Bank



Gambarajah 1: Struktur FIU, Malaysia

## Institusi Pelapor di bawah AMLA

Institusi Pelapor berperanan dan bertanggungjawab untuk melaporkan kepada FIU sebarang aktiviti atau transaksi kewangan pelanggan mereka yang meragukan (*suspicious*). Ianya merupakan langkah pencegahan (preventive measure). Siapakah yang dikategorikan sebagai Institusi Pelapor AMLA di Malaysia? Berikut adalah Institusi Pelapor AMLA di Malaysia dibawah kawal seliaan Bank Negara Malaysia:



Gambarajah 2: Institusi –Institusi Pelapor dibawah AMLA 2001

### **Disclaimer:**

*The views, information and opinions expressed in this article are the author's own and do not represent Transparency International Malaysia. TI-M is not responsible for any inaccuracy or error.*

# Business Human Rights and Corporate Governance: Part 1

By: R. Balakrishnan

TI-M Member

## Introduction

Human rights are now included in **corporate governance** as part of business ethics enterprise and risk management for commercial organizations. The ethical and risk dimensions are connected as ethical gaps or inattention to human rights practices by commercial organizations may breach the human rights of those affected by corporate behaviour and have substantial commercial consequences for the commercial organization. In some cases, breach of human rights can pose a franchise risk to commercial organization<sup>1</sup>; these raise costs and damage associations with stakeholders.

In this article the concept of human rights refers to **business human rights** or rights concerned with the commercial organization.

## The UN Guiding Principles on Business and Human Rights (UNGPs)

The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 on 16 June 2011. UNGPs offer the authoritative international framework for the corresponding duties and responsibilities of governments and commercial organization to prevent, mitigate and address business human rights infringement. It provides a blueprint for how business respect for human rights can back the execution of the Sustainable Development Goals (SDGs) in line with international human rights standards. The detailed 31 Guiding Principles with commentary is a useful reference<sup>2</sup> for all commercial organization.

June 2021 the UNGP's Working Group on Business and Human Rights launched "UNGPs 10+" or "next decade BHR" project.

## What forms of human rights exploitations can commercial organizations be associated to and how is this a substance of corporate governance?

What constitutes human rights? Human rights include conventions or law addressing issues such as child labour, modern day slavery, and indigenous people's rights as well as health services and emerging issues e.g., privacy on the internet<sup>4</sup>, the rights of internet users<sup>5</sup> and sustainable or fair wages<sup>6</sup> broaden concerns into a range of new sectors and all hit at the heart of a commercial organization's capability to operate its business.

Human rights issues have significance beyond governments, legal systems and civil society. Hence, its fundamental to decent corporate governance. Business human rights are rising business risk for commercial organizations, and raise contemporary imperative queries of business ethics that both commercial organization and investors must contemplate as a central ingredient of virtuous management and its future leadership stewardship. The ethical dimension arises in the setting of a commercial organization's own culture and values, predominantly with regard to the influence of business human rights practices on crucial stakeholders, including workforces, customers and societies in which commercial organization function.

## What ought investors expect of commercial organizations and board of directors warranting apt business human rights leadership and management?

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<sup>1</sup> Nike's case study of how child labour in its supply chain came to threaten its global brand.

<https://mallenbaker.net/article/clear-reflection/nike-and-child-labour-how-it-went-from-laggard-to-leader> Accessed on 29th Oct 2021.

<sup>2</sup> Full text: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf) Accessed on 29th Oct 2021



Investors would want to see that the boardroom and commercial organizations top management show an appreciation and understanding of the risk to business when human rights are breached

### **What would be anticipated of investors in commercial organization where business human rights apprehensions may occur?**

The heightened prominence of business human rights has struck attention to the (institutional) investors when capitalizing in commercial organization with possible/potential or actual business human rights infringements. This could happen where there is minority shareholder or even in family ownership stake. Investors are and will have to be mindful and alert to intensifying expectations by communities, more so in today's fast shared digital VUCA world. Therefore, entities who were below the short- or long-range radar can anticipate their unforeseen visibility of business human rights issues.

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) necessitate all OECD members and adhering governments to establish a functioning National Contact Point (NCP) – a government-supported office whose principal duty is to advance the effectiveness of the OECD Guidelines. NCPs advance the success of the Guidelines in two ways: by nurturing awareness amongst industries and other stakeholders about the Guidelines' standards and the NCP grievance mechanism, and by managing 'specific instances' (grievances) against commercial organizations who purportedly have not been successful to achieve the Guidelines' standards. (e.g., the 2005 case of business human rights concerns at the South Korean steel company POSCO).

### **What options are available to investors with regard to providing oversight on human rights issues?**

It is not easy to monitor in detail, actively and promptly to in response to business human rights practices / breach in investee commercial organization. Agreed it may not be practically possible, investor just like any other commercial organization needs to establish resources dedicated for these purposes. Recommended specific approaches includes:

1. Proportionate due diligence - prioritizing on key holdings, high risk sectors and potential business human rights infringement.
2. Develop an appropriate strategy - avoid most egregious forms of business human rights risks or actively be in engagement mode.
3. Public disclosure or public policy engagement.

### **Conclusion**

Business Human Rights are becoming critical and it necessitates to be embedded in the corporate governance of commercial organization as part of evolution, more than legislation requirement. In doing so, human value in operating business would be given importance instead of bulldozing for profit alone. International Human Rights Day is forthcoming this December 10th 2021, let's celebrate and (re) launch **business human rights awareness day** on the same day to help commercial organization appreciate the consequences of its abuse, educate to respect it whilst the state protects them.

### **References:**

1. United Nations Human Rights Office of the High Commissioner website and materials therein: <https://www.ohchr.org/EN/pages/home.aspx>
2. Institute for Human Rights and Business website and materials therein: <https://www.ihrb.org/>
3. International Corporate Governance Network website and materials therein: <https://www.icgn.org/>
4. Organisation for Economic Co-operation and Development website and materials therein: <https://www.oecd.org/>

### **Disclaimer:**

*The views, information and opinions expressed in this article are the author's own and do not represent Transparency International Malaysia. TI-M is not responsible for any inaccuracy or error.*

## TI MALAYSIA EXCO MEMBERS (TERM 2021 – 2023)

The AGM was held on 16 October 2021 via the Zoom platform, with election results are as follows:

Members Name	Position
Dr Muhammad Mohan	President
Lawrence Chew Seng Chen	Deputy President
Raymon Ram	Secretary General
Dr Abadan Jasmon	Treasurer
Chew Phye Keat	Committee Members
Afiqah Ayub	
Nisha Kamilla Sundra Rajoo	
Alan Kirupakaran	
Nurirdzuana Ismail	
Nur' Akilah Saidin	

## COVID-19 ALERT

In light with the current pandemic of COVID-19, TI-M urges the public to give full cooperation and follow the guidelines from the Ministry of Health. Protect yourself by:



Washing your hands regularly



Covering your mouth and nose when you cough or sneeze



Practice social distance



Stay at home